

Introduced by Senator Kuehl

January 23, 2007

An act to amend Sections 1102.3, 1102.3a, 1103.3, and 1368 of the Civil Code, relating to property disclosures.

LEGISLATIVE COUNSEL'S DIGEST

SB 127, as introduced, Kuehl. Property transfers: disclosures.

Existing law requires certain transferors of real property, mobilehomes, manufactured homes, and separate interests in common interest developments to make specified disclosures to transferees as part of their respective transactions. These disclosures concern characteristics affecting the property and hazards to which the property may be subject. Existing law requires, in the case of a sale of real property, that these disclosures be made as soon as practicable before transfer of title. In the case of a sale or a lease with an option to purchase of a mobilehome or manufactured home involving an agent, existing law requires these disclosures be made as soon as practicable, but no later than the close of escrow. In the case of a transfer of a separate interest in a common interest development, existing law requires that the disclosures be made as soon as practicable before transfer of title to the separate interest or execution of a real property sales contract.

This bill would require, in the case of a sale of real property, or a sale or a lease with an option to purchase of a mobilehome or manufactured home, that the disclosures described above be made within 3 days of the execution of an offer to purchase. The bill would require, in the case of a sale of a separate interest in a common interest development, that the necessary disclosures be made within three days of the execution of an offer to purchase title to the separate interest or the execution of an offer to enter into a real property sales contract.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1102.3 of the Civil Code is amended to
2 read:

3 1102.3. The transferor of any real property subject to this article
4 shall deliver to the prospective transferee the written statement
5 required by this article, as follows:

6 (a) In the case of a sale, ~~as soon as practicable before transfer~~
7 ~~of title within three days of the execution of an offer to purchase.~~

8 (b) In the case of transfer by a real property sales contract, as
9 defined in Section 2985, or by a lease together with an option to
10 purchase, or a ground lease coupled with improvements, as soon
11 as practicable before execution of the contract. For the purpose of
12 this subdivision, “execution” means the making or acceptance of
13 an offer.

14 With respect to any transfer subject to subdivision (a) or (b), the
15 transferor shall indicate compliance with this article either on the
16 receipt for deposit, the real property sales contract, the lease, or
17 any addendum attached thereto or on a separate document.

18 If any disclosure, or any material amendment of any disclosure,
19 required to be made by this article, is delivered after the execution
20 of an offer to purchase, the transferee shall have three days after
21 delivery in person or five days after delivery by deposit in the mail,
22 to terminate his or her offer by delivery of a written notice of
23 termination to the transferor or the transferor’s agent.

24 SEC. 2. Section 1102.3a of the Civil Code is amended to read:

25 1102.3a. (a) The transferor of any manufactured home or
26 mobilehome subject to this article shall deliver to the prospective
27 transferee the written statement required by this article, as follows:

28 (1) In the case of a sale, or a lease with an option to purchase,
29 of a manufactured home or mobilehome, involving an agent, as
30 defined in Section 18046 of the Health and Safety Code, ~~as soon~~
31 ~~as practicable, but no later than the close of escrow for the~~ *within*
32 *three days of the execution of an offer to purchase of the*
33 *manufactured home or mobilehome.*

34 (2) In the case of a sale, or lease with an option to purchase, of
35 a manufactured home or mobilehome, not involving an agent, as

1 defined in Section 18046 of the Health and Safety Code, ~~at the~~
2 ~~time of execution of any document by the prospective transferee~~
3 ~~with the transferor for the~~ *within three days of the execution of an*
4 *offer to purchase of the manufactured home or mobilehome.*

5 (b) With respect to any transfer subject to this section, the
6 transferor shall indicate compliance with this article either on the
7 transfer disclosure statement, any addendum thereto, or on a
8 separate document.

9 (c) If any disclosure, or any material amendment of any
10 disclosure, required to be made pursuant to subdivision (b) of
11 Section 1102, is delivered after the execution of an offer to
12 purchase, the transferee shall have three days after delivery in
13 person or five days after delivery by deposit in the mail, to
14 terminate his or her offer by delivery of a written notice of
15 termination to the transferor.

16 SEC. 3. Section 1103.3 of the Civil Code is amended to read:

17 1103.3. (a) The transferor of any real property subject to this
18 article shall deliver to the prospective transferee the written
19 statement required by this article, as follows:

20 (1) In the case of a sale, ~~as soon as practicable before transfer~~
21 ~~of title~~ *within three days of the execution of an offer to purchase.*

22 (2) In the case of transfer by a real property sales contract, as
23 defined in Section 2985, or by a lease together with an option to
24 purchase, or a ground lease coupled with improvements, as soon
25 as practicable before execution of the contract. For the purpose of
26 this subdivision, “execution” means the making or acceptance of
27 an offer.

28 (b) The transferor shall indicate compliance with this article
29 either on the receipt for deposit, the real property sales contract,
30 the lease, any addendum attached thereto, or on a separate
31 document.

32 (c) If any disclosure, or any material amendment of any
33 disclosure, required to be made pursuant to this article is delivered
34 after the execution of an offer to purchase, the transferee shall have
35 three days after delivery in person or five days after delivery by
36 deposit in the mail to terminate his or her offer by delivery of a
37 written notice of termination to the transferor or the transferor’s
38 agent.

39 SEC. 4. Section 1368 of the Civil Code is amended to read:

1 1368. (a) The owner of a separate interest, other than an owner
2 subject to the requirements of Section 11018.6 of the Business and
3 Professions Code, shall, ~~as soon as practicable before transfer of~~
4 *within three days of the execution of an offer to purchase* title to
5 the separate interest or *the execution of an offer to enter into* a real
6 property sales contract therefor, as defined in Section 2985, provide
7 the following to the prospective purchaser:

8 (1) A copy of the governing documents of the common interest
9 development, including any operating rules, and including a copy
10 of the association's articles of incorporation, or, if not incorporated,
11 a statement in writing from an authorized representative of the
12 association that the association is not incorporated.

13 (2) If there is a restriction in the governing documents limiting
14 the occupancy, residency, or use of a separate interest on the basis
15 of age in a manner different from that provided in Section 51.3, a
16 statement that the restriction is only enforceable to the extent
17 permitted by Section 51.3 and a statement specifying the applicable
18 provisions of Section 51.3.

19 (3) A copy of the most recent documents distributed pursuant
20 to Section 1365.

21 (4) A true statement in writing obtained from an authorized
22 representative of the association as to the amount of the
23 association's current regular and special assessments and fees, any
24 assessments levied upon the owner's interest in the common
25 interest development that are unpaid on the date of the statement,
26 and any monetary fines or penalties levied upon the owner's
27 interest and unpaid on the date of the statement. The statement
28 obtained from an authorized representative shall also include true
29 information on late charges, interest, and costs of collection which,
30 as of the date of the statement, are or may be made a lien upon the
31 owner's interest in a common interest development pursuant to
32 Section 1367 or 1367.1.

33 (5) A copy or a summary of any notice previously sent to the
34 owner pursuant to subdivision (h) of Section 1363 that sets forth
35 any alleged violation of the governing documents that remains
36 unresolved at the time of the request. The notice shall not be
37 deemed a waiver of the association's right to enforce the governing
38 documents against the owner or the prospective purchaser of the
39 separate interest with respect to any violation. This paragraph shall

1 not be construed to require an association to inspect an owner's
2 separate interest.

3 (6) A copy of the preliminary list of defects provided to each
4 member of the association pursuant to Section 1375, unless the
5 association and the builder subsequently enter into a settlement
6 agreement or otherwise resolve the matter and the association
7 complies with Section 1375.1. Disclosure of the preliminary list
8 of defects pursuant to this paragraph does not waive any privilege
9 attached to the document. The preliminary list of defects shall also
10 include a statement that a final determination as to whether the list
11 of defects is accurate and complete has not been made.

12 (7) A copy of the latest information provided for in Section
13 1375.1.

14 (8) Any change in the association's current regular and special
15 assessments and fees which have been approved by the
16 association's board of directors, but have not become due and
17 payable as of the date disclosure is provided pursuant to this
18 subdivision.

19 (b) Upon written request, an association shall, within 10 days
20 of the mailing or delivery of the request, provide the owner of a
21 separate interest with a copy of the requested items specified in
22 paragraphs (1) to (8), inclusive, of subdivision (a). The items
23 required to be made available pursuant to this section may be
24 maintained in electronic form and requesting parties shall have
25 the option of receiving them by electronic transmission or machine
26 readable storage media if the association maintains these items in
27 electronic form. The association may charge a reasonable fee for
28 this service based upon the association's actual cost to procure,
29 prepare, and reproduce the requested items.

30 (c) (1) Subject to the provisions of paragraph (2), neither an
31 association nor a community service organization or similar entity
32 may impose or collect any assessment, penalty, or fee in connection
33 with a transfer of title or any other interest except for the following:

34 (A) An amount not to exceed the association's actual costs to
35 change its records.

36 (B) An amount authorized by subdivision (b).

37 (2) The amendments made to this subdivision by the act adding
38 this paragraph do not apply to a community service organization
39 or similar entity that is described in subparagraph (A) or (B):

1 (A) The community service organization or similar entity
2 satisfies both of the following requirements:

3 (i) The community service organization or similar entity was
4 established prior to February 20, 2003.

5 (ii) The community service organization or similar entity exists
6 and operates, in whole or in part, to fund or perform environmental
7 mitigation or to restore or maintain wetlands or native habitat, as
8 required by the state or local government as an express written
9 condition of development.

10 (B) The community service organization or similar entity
11 satisfies all of the following requirements:

12 (i) The community service organization or similar entity is not
13 an organization or entity described in subparagraph (A).

14 (ii) The community service organization or similar entity was
15 established and received a transfer fee prior to January 1, 2004.

16 (iii) On and after January 1, 2006, the community service
17 organization or similar entity offers a purchaser the following
18 payment options for the fee or charge it collects at time of transfer:

19 (I) Paying the fee or charge at the time of transfer.

20 (II) Paying the fee or charge pursuant to an installment payment
21 plan for a period of not less than seven years. If the purchaser
22 elects to pay the fee or charge in installment payments, the
23 community service organization or similar entity may also collect
24 additional amounts that do not exceed the actual costs for billing
25 and financing on the amount owed. If the purchaser sells the
26 separate interest before the end of the installment payment plan
27 period, he or she shall pay the remaining balance prior to transfer.

28 (3) For the purposes of this subdivision, a “community service
29 organization or similar entity” means a nonprofit entity, other than
30 an association, that is organized to provide services to residents
31 of the common interest development or to the public in addition
32 to the residents, to the extent community common areas or facilities
33 are available to the public. A “community service organization or
34 similar entity” does not include an entity that has been organized
35 solely to raise moneys and contribute to other nonprofit
36 organizations that are qualified as tax exempt under Section
37 501(c)(3) of the Internal Revenue Code and that provide housing
38 or housing assistance.

39 (d) Any person or entity who willfully violates this section is
40 liable to the purchaser of a separate interest that is subject to this

1 section for actual damages occasioned thereby and, in addition,
2 shall pay a civil penalty in an amount not to exceed five hundred
3 dollars (\$500). In an action to enforce this liability, the prevailing
4 party shall be awarded reasonable attorneys' fees.

5 (e) Nothing in this section affects the validity of title to real
6 property transferred in violation of this section.

7 (f) In addition to the requirements of this section, an owner
8 transferring title to a separate interest shall comply with applicable
9 requirements of Sections 1133 and 1134.

10 (g) For the purposes of this section, a person who acts as a
11 community association manager is an agent, as defined in Section
12 2297, of the association.